

order of possession to be made against the tenant. The case of the present appellant, however, is far less sustainable than that of the Trustees. Having only recently become the owner of the premises, it was clearly not reasonable that the appellant should succeed against the tenant who has been in the premises since 1966. For these reasons, we dismissed this appeal with costs.

Appeal dismissed.

Solicitors: Kirpal Singh & Co.; J.B. Jeyaretnam & Co.

**CHIANG YIK MUN t/a BUNNY TAILOR v.
CYC SHANGHAI SHIRT CO. PTE. LTD.**

[A.C.J. (Sinnathuray J.) July 30, 1982]
[Singapore — District Court Appeal No. 19 of 1981]

Landlord and Tenant — Controlled premises — Monthly tenancy — Notice to quit in 1960 pursuant to increase in rent — Rent increase accepted by tenant — Ground floor sublet to appellant in 1965 — Death of tenant in 1977 — Effect of 1960 notice to quit — Whether appellant was a trespasser — Control of Rent Act (Cap. 266), s. 7(2).

The facts in this case were as follows. In 1960, Eastern Realty Co. Ltd., the owners of the premises at that time, served a notice to quit (the 1960 notice to quit) on one Foo who was a monthly tenant of the premises. The notice to quit was required to be served under section 7(2) of the then Control of Rent Ordinance pursuant to the company's application to the Rent Conciliation Board for the increase in rent. The increase in rent fixed at \$75.79 by the Board was accepted by both parties.

In 1965 Foo sublet the ground floor of the premises at a monthly rent of \$170 to the appellant. Foo died in 1977. In 1979 the company sold the premises to the present respondents.

The respondents contended that on the expiry of the 1960 notice to quit Foo became a statutory tenant and therefore, could not sublet the ground floor. The appellant was a trespasser and the respondents were entitled to possession of it. The learned Senior District Judge gave judgment in favour of the respondent.

The appellant appealed.

Held, allowing the appeal: (1) when the Board approved the increase of the rent, the order of the Board constituted an offer by the company of a new tenancy to Foo; and, when Foo paid the increased rent, a new contractual tenancy was created effective from November 1, 1960;

(2) in 1965 the appellant had become a sub-tenant of Foo and was therefore not a trespasser of the premises. He is therefore a protected tenant under the Control of Rent Act (Cap. 266).

A Cases referred to:—

- (1) *Summers v. Donohue* [1945] 1 All E.R. 599.
- (2) *The Great Eastern Life Assurance Co. Ltd. v. Goh Ah Kow t/a Singapore Dry Cleaners & Anor.* [1980] 1 M.L.J. 277.
- (3) *Sim Bang Hock v. Lim Kwong Sin* [1970] 1 M.L.J. 124.
- (4) *Arunachalam Chettiar v. Kow Guan* [1963] M.L.J. 253.

B

DISTRICT COURT APPEAL.

Tan Kok Quan for the appellant.
Kirpal Singh for the respondents.

C

Cur. Adv. Vult.

Sinnathuray J.: The sole issue in this appeal from a judgment given in the District Court in favour of the respondents/plaintiffs for recovery of possession of the ground floor of No. 56 Selegie Road (the premises) is whether the appellant/defendant is a protected tenant under the Control of Rent Act (Cap. 266) (the Act) or a trespasser unlawfully in occupation of it. Though the story about the premises refers back to events that cover a period of over 20 years, the relevant facts can be briefly stated.

E

In 1960, Eastern Realty Co. Ltd. (the Company) were the owners of the premises. At that time, Foo Kai Tong (Foo) was a monthly tenant of it. By a notice to quit dated August 18, 1960 (the 1960 notice to quit), the Company determined the tenancy of Foo on September 30, 1960. The notice to quit was served on Foo, not to take ejectment proceedings against him, but for the Company to apply to the Rent Conciliation Board (the Board) to fix the rent of the premises. It is a requirement under section 7(2) of the Act for the tenancy to be determined "according to law" to make the application to the Board.

F

G

H

I

On November 22, 1960, the Board fixed the rent of the premises at \$75.79 per month effective from November 1, 1960. Foo did not appear before the Board. He accepted the Board's decision and thereafter he paid the increased rent, and the new rent was always accepted by the Company without any reservation.

In 1965 Foo sublet the ground floor of the premises to the appellant at a monthly rent of \$170. The appellant set up business there as a tailor under the firm name of "Bunny Tailor".

Next, sixteen years after the 1960 notice to quit, in 1976, by a notice to quit dated October

28, 1976 (the 1976 notice to quit), the Company terminated the monthly tenancy of Foo on November 30, 1976.

On March 30, 1977, the Company commenced an action in the Subordinate Courts (D.C. Summons No. 1423 of 1977) against Foo and the appellant to recover possession of the premises. In the statement of claim it was alleged against Foo that in breach of the condition of the contractual tenancy not to sublet or assign, he had sublet and was collecting rent in excess of the maximum permitted under section 15(1)(g) of the Act. The claim against the appellant was that he was unlawfully in occupation of the ground floor. This action was discontinued when the Company found that Foo had died on February 17, 1977.

On April 28, 1978, the Company commenced another action in the Subordinate Courts (D.C. Summons No. 2078 of 1978). This time the summons was against the widow of Foo, Chia Wai Ying (Chia) and the appellant. The claim against them was the same as was alleged against Foo and the appellant in the earlier action. The appellant in his defence denied that he was unlawfully in occupation of the ground floor of the premises and claimed protection under the Act.

On the return day of the summons, on September 5, 1978 Chia was absent, and judgment was entered against her, but it was made not to be enforceable against the appellant. Later, on September 11, 1979, when the case against the appellant was part-heard, the Company withdrew the action and paid the appellant's costs.

On December 30, 1979, the Company sold the premises to CYC Shanghai Shirt Co. Pte. Ltd. who then brought these proceedings.

In these proceedings, the respondents rely on the 1960 notice to quit. Their case is, as on the expiry of the 1960 notice to quit Foo became a statutory tenant of the premises, Foo could not sublet the ground floor. The appellant was a trespasser unlawfully in occupation of the ground floor, and the respondents were entitled to possession of it.

The learned Senior District Judge accepted this submission and gave judgment for the respondents. He said:

"The defendant called no evidence. Mr. Tan Kok Quan on his behalf contended that since the notice to quit

A dated August 18, 1960 (P.1) was not for the purpose of ejectment, but solely for the purpose of obtaining an order from the Rent Board to increase the rent for the premises, a new contractual tenancy was created after the order of the Board (P.4), pursuant to which the landlords continued to receive rent between 1960 and 1976. This, according to him, was evidenced by the fact that a fresh notice to quit was sent in 1976. As subtenant of the premises, the defendant was entitled to protection under the Act, he said.

B ... In my view, the notice to quit of August 18, 1960 (P.1) albeit for the purpose of eventually seeking an order of the Rent Board, effectively determined the contractual tenancy, and Foo Kai Tong remained in possession not as a contractual tenant but as one whose contractual tenancy had been determined by the notice to quit and, therefore, as only a statutory tenant. The subsequent fixing of the rent by the Rent Board and the acceptance of the new rent did not in my opinion create a new contractual tenancy (see the decision of the English Court of Appeal in *Summers v. Donohue* [1945] 1 All E.R. 599).

C
D At the hearing of the appeal, it was submitted for the appellant that the learned trial Judge had wrongly relied on *Summers v. Donohue*⁽¹⁾ in deciding that a new contractual tenancy was not created when Foo, pursuant to the order of the Board, paid the increased rent to the Company. I was referred to the case of *The Great Eastern Life Assurance Co. Ltd. v. Goh Ah Kow t/a Singapore Dry Cleaners and Anor.*⁽²⁾ where Rajah J. expressed the view that *Summers v. Donohue* is not pertinent to the interpretation of sections 3 and 7 of the Act. I shall consider the case in detail presently, but I mention here that at the hearing of the appeal counsel for the appellant told me that this case was not cited to the learned Senior District Judge. He said that as for himself he was unaware of the case when this action was tried in the District Court as the case had then not been reported in *the Malayan Law Journal*. But he drew my attention that Mr. Kirpal Singh, who had appeared for the plaintiffs at the trial and was representing the respondents in this appeal, had been counsel for the Great Eastern Life Assurance Co. Ltd., the appellants in that case. The explanation of Mr. Kirpal Singh was that he had forgotten the case.

H
I In that case, the claim of the plaintiffs was for recovery of possession of a controlled premises against three defendants. The plaintiffs alleged that by a notice to quit dated February 22, 1952, the contractual tenancy of the first defendant was terminated on March 31, 1952; that the Rent Conciliation Board had then increased the rent of the premises to \$120 per month effective from April 1, 1952; and that the first defendant thereafter continued occupation of the premises as a

statutory tenant. The plaintiffs also alleged that by a second notice to quit dated November 2, 1975 the statutory tenancy of the first defendant was terminated on December 31, 1975. The plaintiffs claimed possession against the first defendant under section 27(a) of the Act, on the ground that he was not in occupation of the premises, and against the second and third defendants on the ground that they were unlawfully in occupation of it. The first defendant consented to judgment and the trial proceeded against the other two defendants. At the close of the hearing the learned District Judge dismissed the plaintiffs' claim with costs.

Of the five main issues canvassed in that case, only the second is relevant in this appeal.

"(2) Had a new contractual tenancy been created as between the plaintiffs and the 1st defendant after the Rent Conciliation Board had granted approval for the increased rent of \$120 per mensem effective from April 1, 1952 or was the 1st defendant a statutory tenant of the plaintiffs as from April 1, 1952."

On this issue the learned District Judge found that a new contractual tenancy of the premises was created between the plaintiff and the first defendant at the new monthly rental of \$120.

At the hearing of the appeal in the High Court, Mr. Kirpal Singh for the plaintiffs/appellants strenuously argued all five issues. Rajah J. in his judgment at page 278 said that nothing was advanced by counsel to induce him to interfere with the findings of the learned District Judge. He dismissed the appeal with costs.

It is crystal clear to me that the present case is identical to *The Great Eastern case (supra)*. I therefore consider it a matter for regret that the learned Senior District Judge was not told of the case. Had it been referred to him, he was bound to have dismissed this action with costs.

At the hearing of the appeal, however, Mr. Kirpal Singh submitted that I am not bound by the decision of Rajah J. He also referred me to the decision of Chua J., in District Court Appeal No. 82 of 1979 where from the record of appeal it is to be gathered that in dismissing the appeal of the tenant, Chua J. had rejected the ground of appeal of the tenant that a new contractual tenancy was created when, after the order of the Board, the tenant paid and the landlord accepted the new rent.

A As there are two conflicting decisions of the High Court, I think I should give my views on the submissions of law made to me.

B There is *Summers v. Donohue* relied upon by the trial Judge but of which Rajah J. has said that it has no relevance to the Act. The learned Judge gave as his reason that section 3(1) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 of England (the 1920 Act) is not the same as section 3(1) of our Act with regard to increase of rent of controlled premises. That is so, but neither he nor the trial Judge has referred to the facts and issues on which *Summers v. Donohue* was decided. They are these.

C The plaintiff was the owner of certain premises under the Rent Restrictions Acts. In 1920 the defendant's father was a tenant of the premises, when the rent was increased to the amount permitted under the 1920 Act. After the father died in 1927, his widow continued in occupation under section 12(1)(g) of the 1920 Act. In 1944 the widow, the defendant's mother, died and the defendant, who was her only relative living with her in the house, continued in occupation. The plaintiff brought ejectment proceedings against the defendant. There were two issues before the Court of Appeal. One was whether the defendant was a tenant within the meaning of section 12(1)(g) of the 1920 Act which does not concern us. The second was whether the County Court Judge was right to have inferred, by reason of section 3(2) of the 1920 Act, that there was in fact, though strict proof of it was lacking, a notice properly served on the defendant's father in 1920 prior to the increasing of the rent. MacKinnon L.J. who delivered the leading judgment referred to section 3(2) of the 1920 Act, which provides that no increase of rent shall be recoverable until one week,

H "after the landlord has served upon the tenant a valid notice in writing of his intention to increase the rent, which notice shall be in the form contained in the First Schedule to this Act ...",

and held that

I "Having regard to that provision as to the illegality of any increase of rent without serving such a notice, I think the county court judge was not only justified but was right in drawing that inference."

He however went on to say:

"The result of that is that when the father died in 1927 he was a statutory tenant."

On the issues that were before the Court of Appeal in England, this last statement of MacKinnon L.J. was *obiter* for no submissions were made to the court on the question whether a contractual or statutory tenancy was created when the father accepted the new rent pursuant to the notice which it was inferred had been served on him. *Summers v. Donohue* therefore is not an authority on this point.

In my view the judgment in *Summers v. Donohue* that where there is an increase in rent under the Rent Restrictions Acts, it is to be inferred that the landlord had, prior to the making of the increase, served the requisite notice on the tenant, is applicable in Singapore because in substance the effect of section 7(2) of the Act is the same as section 3(2) of the 1920 Act. Section 7(2) provides as follows:

"Nothing in this section shall be deemed to relieve a landlord from the necessity of determining the tenancy according to law prior to increasing the rent."

Next, it is not in dispute in this appeal that before a landlord can make an application to the Board for the permitted increase of rent under section 7(1) of the Act, a notice to quit must be served on the tenant to determine the tenancy under section 7(2) of the Act. It is however submitted by Mr. Kirpal Singh that there is nothing in the Act which provides that once the Board has increased the rent, there is created a new contractual tenancy between the landlord and the tenant who had by virtue of the notice to quit been made a statutory tenant. That is true, but it does not follow that because there is nothing in the Act a tenancy cannot be created between the parties consequent upon the increase of the rent by the Board. In *Sim Bang Hock v. Lim Kwong Sin*⁽³⁾ Ismail Khan C.J. (Borneo) who delivered the judgment of the Federal Court said at page 125:

"Where, however, the tenant consents, upon receipt of notice, oral or written, of the landlord's intention to raise the rent and, pursuant thereto, pays the increased rent, it is, of course, elementary law that a new tenancy at the higher rent replaces the old thereafter."

The appeal before the Federal Court related to the correctness of the interpretation by the trial Judge of section 8(2) of the Rent Control Ordinance (Cap. 86 of the Laws of Sarawak, 1958) which is exactly the same as section 7(2) of our Act. Ismail Khan C.J. said:

"The point of law is already covered by authority, although, unfortunately, it had not been brought to the notice of the judge. We refer to *Arunachalam Chettiar v. Kow Guan* a unanimous decision of the then Federation

A Court of Appeal, with which we are in respectful agreement."

In *Arunachalam Chettiar v. Kow Guan*⁽⁴⁾ the Court of Appeal in Malaya considered section 6(2) of the Control of Rent Ordinance, 1956 which is also exactly the same as section 7(2) of our Act. Thomson C.J. (as he then was) in delivering the judgment of the court said of a contractual tenancy –

"So long as such a tenancy and the contract from which it arises are in force the landlord cannot compel the tenant to pay an increased rent. He has agreed to accept a certain sum by way of rent and he is bound by his agreement. He may, however, terminate the existing tenancy by notice and offer the tenant a new tenancy at an increased rent. And if the tenant accepts then he is bound to pay the new rent which he has agreed to pay."

He then dealt with section 6(2):

D "It makes it clear that if the lawful rent under the Ordinance is higher than the contractual rent and if the landlord wishes to compel payment of that higher rent then he must get rid of the contractual relationship with his tenant by terminating the existing tenancy in accordance with the ordinary law of contract and persuade the tenant to enter into a new contract of tenancy providing for the higher rent. Hence "the necessity" for determining the old tenancy "according to law". The law from which the necessity arises is the general law of contract and not the Control of Rent Ordinance."

F With the above weighty *dicta* in mind, I revert to the facts in this appeal. The 1960 notice to quit given by the Company to Foo was not for the purpose of ejectment proceedings; it was given by the Company to comply with section 7(2) of the Act as the Company wanted to apply to the Board to increase the rent of the premises. When the Board approved the increase of the rent, the order of the Board constituted an offer by the Company of a new tenancy to Foo; and, when Foo paid the increased rent, a new contractual tenancy was created effective from November 1, 1960. In this context, I accept the submission of Mr. Tan Kok Quan for the appellant that the subsequent conduct of the Company confirms that Foo was a contractual tenant until his tenancy was terminated by the 1976 notice to quit. Earlier however, in 1965, the appellant had become a subtenant of Foo of the ground floor of the premises. It follows that the appellant is not a trespasser of the premises. He is now a protected tenant under the Act. I accordingly allow the appeal. The respondents will pay the costs here and below.

Appeal allowed.

Solicitors: *Lee & Lee; Kirpal Singh & Co.*